

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING  
COMMUNITY TECHNOLOGY FOUNDATION OF CALIFORNIA  
MOTION TO COMPEL**

This ruling resolves the Community Technology Foundation of California (CTFC) motion, filed July 22, 2005, for an order compelling SBC Communications, Inc. (SBC) to respond fully to CTFC data requests 1-7 through 1-21, 4-1, 4-3, and 4-5, as specifically identified in Attachment A to the motion. SBC's responses to the requests were attached as Exhibits to the Declaration of Janine L. Scancerelli, provided as Attachment B to the motion. CTFC is moving to file the responses under seal, as SCE has marked the responses "Confidential." The motion to file the responses under seal is granted.

SBC filed a response in opposition to the motion on July 27, 2005. SBC claims that CTFC already possesses sufficient information to address AT&T's role in providing telecommunications services in California's diverse communities, with or without the merger. AT&T provided information

responsive to CTFC's data requests about AT&T's current deployment, and CTFC has not moved to compel additional information from it.<sup>1</sup> SBC claims that CTFC does not articulate why information about SBC's advanced services would bear upon the change of control of AT&T's California affiliates. In any event, SBC claims that it has made clear in its responses to CTFC's data requests it has not finalized any post-merger marketing plans related to the "digital divide" or particular segments of the mass market, because such steps would be premature so far in advance of the merger's close. Finally, Applicants claim the data requests that are the subject of CTFC's motion do not pertain to services regulated by this Commission, and any possible legitimate use at this late stage of the proceeding for the information sought is outweighed by the burden upon Applicants of addressing CTFC's tardy requests and similarly belated motion.

#### **Data Requests 1-7 through 1-16**

CTFC data requests 1-7 through 1-16 seek all documents that constitute or relate to plans for the post-merger entity to compete for the business of minority, disabled, limited-English-proficiency, and inner-city customers in California. CTFC claims that it has repeatedly asked SBC to verify whether any such plans exist. (Scancarelli Decl., ¶ 7). In a letter dated a month after CTFC's June 14 letter, asking SBC to provide documents that relate to any plans or proposals, SBC responded that it "does not have any additional information responsive to these requests." CTFC has since asked SBC to provide supplemental or amended responses to reflect that SBC does not have responsive information. CTFC claims

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<sup>1</sup> Declaration of August O. Stofferahn in Support of Applicants' Response to Community Technology Foundation of California's Motion to Compel Discovery Responses ("Stofferahn Decl."), ¶ 3 and Exhibit 2.

that SBC is apparently trying to avoid admitting that there are no responsive plans related to competing for the business of minority, disabled, limited-English-proficiency, and inner-city customers in California.

In its opposition to the motion SBC responds that these requests for the specific plans of the merged company overlook the limits, applicable until the merger is finalized and approved, on AT&T and SBC's collective planning and decision-making.<sup>2</sup> The companies cannot yet determine how and where they plan to compete for these customers, just as they have not created marketing plans for Californians who are not disabled, not inner-city residents, etc. For example, SBC states that it has no "maps showing priority areas for rolling out advanced services by the merged entity"<sup>3</sup> and cannot create such maps without having detailed knowledge about AT&T's facilities and resources. As CTFC notes in its motion, SBC explained this in its original responses and in meet-and-confer.

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<sup>2</sup> See, e.g., 2-19 Matthew Bender & Co. Inc., *Corporate Acquisitions and Mergers* § 19.05 (2005) ("The Hart-Scott-Rodino Act imposes a premerger waiting period during which the merger parties must continue to operate as separate and independent competitors; they therefore cannot engage in any coordinated business activities during this period.

<sup>3</sup> See CTFC Data Request 1-20 in Exhibit 1 to the Declaration of Janine L. Scancarelli ("Scancarelli Decl."), filed in support of CTFC's motion.

## **Discussion**

Based on the response in the letter from SBC's counsel, quoted by CTFC, that "SBC does not have any additional information responsive to these requests," it is concluded that this response is complete. Even though SBC hasn't used the precise word-for-word characterization of the answer, as desired by CTFC, SBC has provided a sufficiently responsive answer. Since, by SBC's own admission, there is "no additional information," it must necessarily be true, as CTFC phrases it, that "there are no responsive plans related to competing for the business of minority, disabled, limited-English-proficiency, and inner-city customers in California."

Belaboring the precise wording of the answer any further serves no useful purpose. Thus, since SBC has represented that it has no further responsive material relating to these data requests, there is nothing further to compel. CTFC's motion to compel with respect to data requests 1-7 through 1-16 is accordingly denied.

## **Data Requests 1-17**

CTFC data requests 1-17 seeks, among other things, all documents to support a statement in the Joint Reply to Protests that SBC has a "deep commitment to serve all California communities" and "proven track record" that is at issue in this request. CTFC argues that SBC should be compelled to produce responsive documents or admit that no responsive documents exist.

In its opposition, SBC responds that it is one of this state's few carriers of last resort and participates in the program, the Deaf & Disabled Telecom program, and other public policy initiatives. SBC states that it has produced

information related to its promotion of the Universal Lifeline Telephone Service (ULTS) program on tribal lands and to minority language communities.<sup>4</sup> SBC argues that CTFC's request for all documents regarding SBC's commitment to California communities, even if limited to just the ULTS and Deaf & Disabled Telecom programs, is overbroad and unduly burdensome. In addition, SBC claims that the requested documents have no relevance to the effects of SBC assuming control of AT&T's affiliates, and that it should not be compelled to produce additional documents.

In its third-round reply, CTFC states that SBC finally produced documents it deemed responsive to data request 1-17 on July 25, 2005, as identified by CTFC. In its third-round reply, CTFC states that it will accept SBC's production of documents in response to data request 1-17 as complete if Applicants are then precluded from introducing in this proceeding any other documents or evidence in support of the statement in their Joint Reply that they " have a deep commitment to serve all California communities and a proven track record of wide deployment of advanced services to the public as a whole, including deployment in minority, low-income and rural areas."

### **Discussion**

In view of the documents produced on July 25, 2005, in response to data request 1-17, it is concluded that SBC has provided sufficient responsive information relating to this data request, and no further information shall required to be produced. As hypothesized by CTFC, if SBC were later to seek to produce additional documents in support of its above-stated position that had

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<sup>4</sup> Stofferahn Decl, ¶ 5 and Exhibit 1.

been withheld from CTFC, SBC would bear full responsibility for any alleged misrepresentation to CTFC or to the Commission.

**Data Requests 1-18 through 1-21; 4-1, and 4-3 through 4-5**

Data requests 1-18 through 1-21 asks for maps showing areas where advanced services are being rolled out. CTFC claims that the maps showing SBC deployment (or lack thereof) of advanced services and any documentation relating to roll-out plans for these services will confirm whether SBC has, in fact, deployed its advanced services to “minority, low-income, and rural areas.”

CTFC data requests 4-1, and 4-3 through 4-5 seek detailed information regarding SBC’s current or future deployment of “advanced services” related to Project Lightspeed, SBC’s initiative to create access to Internet Protocol TV (IPTV), high-speed Internet access, and, in the future, VoIP services.

SBC argues that such information is not relevant to this proceeding or any other proceeding before this Commission because IPTV, the Internet, VoIP and other advanced services are generally matters of interstate jurisdiction, to the extent they are regulated at all, and also is of the highest competitive sensitivity.

SBC claims that data about Project Lightspeed would shed no light on the questions before the Commission in this proceeding, and that there is no connection between a change in control of AT&T affiliates and the detailed information that CTFC has requested about SBC’s Project Lightspeed and other advanced services.

CTFC asserts that Applicants “have placed their record of deploying advanced services to underserved communities at issue.”<sup>5</sup> SBC responds, however, that CTFC has not suggested that the change in control would lead to less extensive deployment by these entities.

SBC claims that Applicants’ pleadings and testimony detailed AT&T’s withdrawal from the market for traditional consumer voice services and identified business reasons for that withdrawal. AT&T responded to CTFC data requests 1-18 and 1-19 by describing its current deployment of advanced services to residential customers, and CTFC has not sought to compel any additional information from it.<sup>6</sup> SBC argues that with this information about AT&T’s track record, CTFC has the information necessary to assess the transaction.

SBC further claims that CTFC has not demonstrated that additional information from SBC would be of any use at this stage of the proceeding, given that CTFC submitted its testimony over a month ago. CTFC claimed during meet-and-confer that its witness’s citation of one of these documents may enable CTFC to enter further responses from SBC into evidence, depending upon how Applicants choose to cross-examine him.<sup>7</sup>

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<sup>5</sup> Mot. at 6. In a conference related to these data requests, counsel for CTFC stated that the proposed merger’s impact on competition could affect the availability of advanced services, but was unable to explain how SBC’s current deployment or plans would affect AT&T’s offerings. Similarly, CTFC’s expert economist has not provided an explanation in either a supporting declaration or in his testimony.

<sup>6</sup> Stofferahn Decl., Exhibit 2.

<sup>7</sup> Stofferahn Decl., ¶ 9.

## Discussion

It is ruled that CTFC has not justified an order compelling production of further documents in connection with these requests. Beyond the question of the connection between the requested data and the effects of the change in control of ownership of AT&T, there does not appear to be any practical vehicle at this point whereby such data could be introduced into the record. As noted above, although CTFC claims it might use the data and documents requested to cross-examine Applicant's witnesses.<sup>8</sup> CTFC has acknowledged that SBC's witnesses do not discuss Project Lightspeed.<sup>9</sup> SBC argues that such questioning would be beyond the scope of their testimony.

Applicants do not intend to cross-examine Dr. Braunstein on this subject, and thus the motion is moot with respect to data requests 4-1 and 4-3 through 4-5. CTFC also asserts that it should be allowed to use the data and documents requested to cross-examine Applicant's witnesses.<sup>10</sup> CTFC has acknowledged, however, that SBC's witnesses do not discuss Project Lightspeed,<sup>11</sup> and such questioning would be beyond the scope of their testimony. In addition, it is evident that CTFC does not intend to use the highly detailed and confidential information that it seeks during the cross-examination of Christopher Rice, SBC's

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<sup>8</sup> Mot. at 7.

<sup>9</sup> Stofferahn Decl., ¶ 10.

<sup>10</sup> Mot. at 7.

<sup>11</sup> Stofferahn Decl., ¶ 10.



Executive Vice President for Network Planning and Engineering, as it has estimated that it will spend only 15 minutes cross-examining him.<sup>12</sup>

Given these considerations, CTFC has not justified that a motion to compel is warranted for these data requests. The motion comes too late to be useful in producing data that can be introduced as exhibits. Moreover, CTFC has not provided a satisfactory explanation as to why the matter wasn't brought before the Commission sooner. The Assigned Commissioner's Ruling directed parties to "bring any discovery dispute before the Commission *without delay* in the form of a motion to compel."<sup>13</sup> SBC served its responses to CTFC's first set of data requests on June 3, 2005, three weeks before CTFC's reply testimony was due.<sup>14</sup>

Thus, in view of these considerations, the motion to compel relating to these data requests is denied.

**IT IS RULED** that:

1. The motion to compel, discussed above, as filed by the Community Technology Foundation of California (CTFC) motion, filed July 22, 2005, for an order compelling responses from SBC Communications, Inc. (SBC) is denied, subject to the caveats and principles, as set forth above.

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<sup>12</sup> Email to ALJ Pulsifer and the service list from Patricia Pineda, on behalf of Janine Scancarelli and CTFC, July 26, 2005.

<sup>13</sup> Assigned Commissioner's Ruling Providing Scoping Memo (Revised), filed April 26, 2005 at 6 (emphasis added).

<sup>14</sup> Stofferahn Decl., ¶ 2.

2. The motion to file confidential materials identified as Exhibits 1, 2, 4, and 5 to the Scancarelli Declaration of under seal is hereby granted.

Dated August 2, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Community Technology Foundation of California Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated August 2, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.